REMARKS

1. In response to the Office Action mailed November 29, 2010, Applicants respectfully request reconsideration. Claims 139, 140, 144-146, 150, 153, 155-159, 162, 164-168, 171 and 173-187 were last presented for examination. In the outstanding Office Action, claims 139, 140, 144-146, 150, 153, 155-159, 162, 164-168, 171 and 173-187 were rejected. By the foregoing amendments, claims 156 and 165 have been amended. No claims have been added or cancelled. Upon entry of this paper, claims 139, 140, 144-146, 150, 153, 155-159, 162, 164-168, 171 and 173-187 will be pending in this application. Of these thirty-four (34) claims, four (4) claims (claims 139, 156, 165 and 174) are independent.

2. Based upon the following Amendments and Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered and withdrawn.

Claim Rejections under §102 - Givens

3. The Examiner rejects claims 139, 140, 144, 150, 155, 156, 159, 162, 164, 165, 168, 171, 173 and 174 under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,916,291 to Givens et al., (hereinafter, "Givens"). Givens is directed to clinician implemented methods to remotely assess and certify the hearing loss of a patient according to standardized guidelines. (*See*, Givens, col. 2, lns. 18-56.) In Givens, the tests "use a computer network to allow interaction between a test administration site and one or a plurality of remote ('local') patient sites." (*See*, Givens, col. 8, lns. 57-61.) In particular, the "test is relayed from the test administration site to a desired patient or local site through the use of a computer network." (*See*, Givens, col. 8, ln. 63- col. 9, ln. 15.) The tests are then administered by the clinician in a manner that allows "interaction . . . between the user [patient] and the clinician during at least a portion of administration of the test." (*See*, Givens, col. 9, lns. 15-20.)

Claim 139

4. Applicants' claim 139 recites a system comprising "a recipient subsystem configured to . . . communicate with the cochlear implant and to perform the series of after-care tests,

substantially independent of the clinician subsystem, in response to a series of recipient inputs." (*See*, Applicants' claim 139, above.) In the Office Action, the Examiner asserts that Givens discloses a system in which "[t]he recipient/patient steps through the series of tests by using a user interface to indicate that a particular test tone is heard at which time the series proceeds to the next test tone." (*See*, Office Action, pg. 15, citing columns 12, 14 and 15 of Givens.) However, Applicants submit that the Examiner's reliance on Givens is misplaced, and that this alleged testing is not taught by Givens.

5. In portions of column 15 relied upon by the Examiner for the above assertion, Givens discloses that "[w]hen the test sequence and tone are output, the patient indicates when a test tone is audible." (*See*, Givens, col. 15, lns. 8-10.) In response to the indication, a "processor . . . generates and/or selects a web page 70c to be served to a client at the test administration site 10." (*See*, Givens, col. 15, lns.10-13; emphasis added.) Givens further discloses that such a web page "may be served to the test administration site 10 by the local device 50, 50' to allow control of the local device 50, 50'." (*See*, Givens, col. 15, lns. 59-61; emphasis added.) More specifically, the web page "may be provided from the server of the local device 50, 50' to a client . . . at the test administration site 10 and includes test control parameters which can be activated and/or adjusted by the clinician during the test." (*See*, Givens, col. 15, lns. 62-66; emphasis added.)

6. As it clear from Givens, the client "at the test administration site" is a clinician remote from the recipient. Accordingly, Givens discloses generating a web page enabling a clinician at a remote test administration site to control the test in response to recipient input. That is, the clinician is controlling the test in response to the recipient's indication of when a tone is audible. Applicant submits that the equipment that performs such clinician controlled testing is not "a recipient subsystem configured to . . . communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs," as recited in Applicants' claim 139. (Emphasis added.) In particular, Applicants submit that Givens fails to disclose performing multiple portions of a single test, much less performing a series of different

tests, substantially independent of the test administration site, in response to a series of recipient inputs. Rather, Applicants submit that Givens' local device continually prompts the test administration site to control a hearing test performed by the local device.

7. In addition, the portion of column 14 cited by the Examiner discloses that "the data processing system 70 receives commands from the clinician at the test administration site 10 and controls the function generator 56 and attenuator 57 to output the desired test sequence and tone . . . to the client or patient," and the cited portion of column 12 discloses tone output and recipient input devices. (*See*, Givens, col. 14, lns. 48-52 and col. 12, lns. 38-54.) As such, Applicants submit that the portions of columns 12 and 14 of Givens relied upon by the Examiner do not cure the deficiencies of column 15.

8. Applicants remind the Examiner that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (*See*, MPEP §2131, quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).) The MPEP makes it clear that for a *prima facie* rejection under 35 U.S.C. §102, "[t]he identical invention must be shown in ***as complete detail as is contained in the . . . claim***." (*See*, MPEP §2131.01, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); emphasis added.) However, for at least the reasons discussed above, Applicants submit that Givens fails to show "a recipient subsystem configured to . . . communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs," as recited in Applicants' claim 139, in as complete detail as is contained in the claim.

9. As such, Applicants submit that Givens fails to anticipate or render obvious Applicants' claim 139. Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

Claim 156

10. As amended, Applicants' claim 156 is directed to a "method for performing after-care

of a recipient of a cochlear implant." (*See*, Applicants' claim 156, above.) The method comprises "performing the series after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 156, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Givens fails to disclose these elements of claim 156. In particular, in Givens the clinician controls the tests through the system, and the patient has little to no control over the tests. Accordingly, the tests of Givens cannot be considered to be "substantially independent of the clinician subsystem."

Claim 165

11. As amended, Applicants' claim 165 is directed to a "non-transitory computer readable medium comprising computer code instructions which, when executed by a computer system implement a method of performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 165, above.) The method comprises "performing the series of after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 165, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Givens fails to disclose the above elements of claim 165. In particular, in Givens the clinician controls the tests through the system, and the patient has little to no control over the tests. Accordingly, the tests of Givens cannot be considered to be "substantially independent of the clinician subsystem."

Claim 174

12. As amended, Applicants' claim 174 is directed to a "system for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 174, above.) The system comprises "means for proceeding through the series of after-care tests with said recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 174, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Givens fails

to disclose at least the above elements of claim 174. In particular, in Givens the clinician controls the tests through the system, and the patient has little to no control over the tests. Accordingly, the tests of Givens cannot be considered to be "substantially independent of the clinician subsystem."

Claim Rejections under §103 - Givens in view of Faltys

13. The Examiner also rejects claims 145, 146, 153, 157, 158, 166, 167 and 175-187 under 35 U.S.C. 103(a) as allegedly being unpatentable over Givens in view of U.S. Patent No. 5,626,629 to Faltys et al., (hereinafter, "Faltys"). Applicants assert that neither Givens nor Faltys, taken alone or in combination, inherently or expressly disclose all elements of the claimed invention.

Claim 139

14. In the outstanding Office Action, the Examiner asserts that "Givens teaches many of the features of the claimed invention," as set forth in the §102 rejections over Givens. (*See*, Office Action, pg. 8.) However, for the reasons explained above with specific reference to claim 139, Givens fails to expressly or inherently disclose "a recipient subsystem configured to . . . perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs," as recited in Applicants' claim 139. Applicants assert that Faltys fails to disclose that which is missing from Givens.

15. Faltys is directed to a system for fitting or programming a cochlear stimulation system for a patient utilizing objective measurements rather than subjective feedback. (*See*, Faltys, col. 3, lns. 29-47.) In Faltys, the clinician utilizes the fitting system to instruct the cochlear implant system to deliver an electrical stimulation signal to the patient. (*See*, Faltys, col. 5, ln. 52-col. 6, ln. 42; and col. 15, lns. 19-56.) The fitting system records an objective measurement of the patient's response to the stimulation. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23.) Based on the objective measurement, the clinician adjusts the stimulation provided. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23; and col. 15, lns. 52-56.) This procedure is iteratively repeated to determine a patient's threshold and comfort levels. (*See*, Faltys, col.

6, lns. 32- col. 8, ln. 23; col. 15, lns. 52-56; and col. 16, lns. 19-23.) In other words, in the system of Faltys, a clinician operates the tests, evaluates objective feedback and adjusts stimulation signals applied to the patient. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23; and col. 15, lns. 19-56.) Due to this large amount of clinician involvement, Applicants submit that Faltys fails to disclose any local device that enables a patient to proceed through a series of after-care tests, via the patient's input to the local device, substantially independent of a remote site. As such, Applicants submit that Faltys fails to cure the above-noted deficiencies of Givens.

16. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 139, Applicants respectfully request that the above rejections of claims 145, 146, 153 and 177-180 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 156

17. As amended, Applicants' claim 156 is directed to a "method for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 156, above.) The method comprises "performing the series after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 156, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Faltys fails to disclose at least these elements of claim 156. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 156, Applicants respectfully request that the above rejections of claims 157, 158 and 181-183 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 165

18. As amended, Applicants' claim 165 is directed to a "non-transitory computer readable medium comprising computer code instructions which, when executed by a computer system implement a method of performing after-care of a recipient of a cochlear implant."

(*See*, Applicants' claim 165, above.) The method comprises "performing the series of after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 165, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Faltys fails to disclose at least these elements of claim 165. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 165, Applicants respectfully request that the above rejections of claims 166, 167, 184 and 185 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 174

19. As amended, Applicants' claim 174 is directed to a "system for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 174, above.) The system comprises "means for proceeding through the series of after-care tests with said recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 174, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Faltys fails to disclose at least these elements of claim 174. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 174, Applicants respectfully request that the above rejections of claims 175, 176, 186 and 187 under 35 U.S.C. §103 be reconsidered and withdrawn.

Dependent Claims

20. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Dependent Claim 179

21. Applicants' claim 179 recites "wherein one of the series of after-care tests determines whether the dynamic range of each of the plurality of electrodes is set correctly." (*See*, Applicants' claim 179, above.) Additionally, claim 179 depends from Applicants' claim 177, which recites "wherein one of the series of cochlear implant after-care tests is a cochlear implant integrity check configured to determine whether one or more components of the cochlear implant are operating correctly." (*See*, Applicants' claim 177, above.) As such, in Applicants' claim 179 the series of after-care tests includes two substantially different types of after-care tests, namely a dynamic range test and a cochlear implant integrity check.

22. For the reasons explained above with specific reference to claim 139, Givens fails to expressly or inherently disclose "a recipient subsystem configured to . . . perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs," as recited in Applicants' claim 139, and Faltys fails to cure these deficiencies. At least for similar reasons, Applicants submit that Givens and Faltys also fail to anticipate or render obvious performing a series of substantially different types of after-care tests "substantially independent of the clinician subsystem, in response to a series of recipient inputs." (*See*, Applicants' claims 139, 177 and 179, above).

23. Accordingly, for at least this additional reason, Applicants submit that claim 179 is not anticipated or rendered obvious by Givens and Faltys, individually or in combination.

Claim Amendments

24. Applicants have amended claims 156 and 165 above to correct minor typographical errors. As such, Applicants submit that the above amendments do not change the scope of the claims.

Conclusion

25. In view of the foregoing, Applicant respectfully submits that this application is now in condition for allowance. A notice to this effect is respectfully requested.

26. Applicant makes no admissions by not addressing any outstanding rejections or bases of rejections. Furthermore, Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Thus, cancellations and amendments of above claims, are not to be construed as an admission regarding the patentability of any claims.

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